



DECISION

Decision of October 2, 2017

DATE:

10/02/2017

ORGANIZATION:

Division of Banks

Petitioner: Berkshire Bank

Respondent: Division of Banks

Decision relative to the merger of Commerce Bank & Trust Company, Worcester, Massachusetts with and into Berkshire Bank, Pittsfield, Massachusetts

Berkshire Bank, Pittsfield, Massachusetts (Berkshire) has applied to the Division of Banks (Division) for authority to merge with Commerce Bank & Trust Company, Worcester, Massachusetts (Commerce) pursuant to the provisions of Massachusetts General Laws chapter 167I, section 3. Under the terms of an Agreement and Plan of Merger dated as of May 22, 2017 and an Agreement and Plan of Bank Merger, Commerce will merge with and into Berkshire under the charter, by-laws, and name of Berkshire (Continuing Institution). The main office of Berkshire will remain the main office of the Continuing

Institution after consummation of the proposed merger, and the Continuing Institution will retain all of the banking offices of Commerce as branch offices. Berkshire intends to operate the Commerce banking offices located in Worcester County and Middlesex County under the name “Commerce Bank, A Division of Berkshire Bank.” The merger application was filed in connection with a multi-step transaction in which, in addition to the merger of Commerce with and into Berkshire, Commerce Bancshares Corp. (Commerce Bancshares), the holding company for Commerce, will merge with and into Berkshire Hills Bancorp, Inc. (Berkshire Hills), the holding company for Berkshire.

Legal and Procedural Requirements

Notice of Berkshire’s application was posted and published as directed by the Division thereby affording opportunity for interested parties to submit comments. The period for filing comments has expired, and no comments were received. The Division reviewed the application and supplementary materials submitted by Berkshire in accordance with applicable law, including the statutory criteria of whether competition among banking institutions will be unreasonably affected and whether public convenience and advantage as well as “net new benefits” will be promoted by approval of the proposed transaction. The Division considered both banks’ records of performance under the Community Reinvestment Act (CRA) as well as financial and managerial factors.

Pursuant to Massachusetts General Laws chapter 167A, section 3, because Commerce Bancshares will merge with and into Berkshire Hills simultaneously with the merger of the subsidiary banks and since the bank merger is approved by the Division, an application to the Commonwealth’s Board of Bank Incorporation is not required for the merger of the holding companies. In reviewing the proposed transaction, the Division must receive notice from the Massachusetts Housing Partnership Fund (MHPF) that satisfactory arrangements have been made consistent with Massachusetts General Laws chapter 167A, section 4 and the MHPF’s affordable housing loan programs. The Division received notice from the MHPF that satisfactory arrangements have been made for this transaction in a letter dated September 29, 2017.

The Parties

Berkshire is a Massachusetts-chartered trust company and is the sole banking subsidiary of Berkshire Hills, a Delaware corporation. In addition to its main office in Pittsfield, Massachusetts, Berkshire operates 97 full-service branch offices in Massachusetts, Connecticut, New Jersey, New York, Pennsylvania, and Vermont. As of June 30, 2017, Berkshire had total assets of approximately \$9.6 billion and total deposits of approximately \$6.9 billion. Berkshire offers a full range of personal and business checking, deposit, and loan products and services. Berkshire’s deposits are insured up to allowable limits by the Federal Deposit Insurance Corporation (FDIC). Upon consummation of the proposed transaction, the consolidated assets

of Berkshire and Berkshire Hills will exceed \$10 billion, a significant benchmark under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Commerce is a Massachusetts-chartered trust company and the sole banking subsidiary of Commerce Bancshares. In addition to its main office in Worcester, Massachusetts, Commerce operates 15 full-service branch offices, all of which are located in Massachusetts. As of June 30, 2017, Commerce had total assets of approximately \$1.9 billion and total deposits of approximately \$1.7 billion. Commerce offers a range of personal and business checking, deposit, and loan products and services. Commerce's deposits are insured up to allowable limits by the FDIC.

Competition

Materials have been submitted to address the issue that competition among banks will not be unreasonably affected by the proposed transaction. In analyzing the impact of a proposed transaction on banking competition, the Division considers, but does not rely exclusively upon, the guidelines used by federal authorities to review bank mergers. Essentially, these guidelines define relevant markets and market concentration, which is considered an important indicator of competitiveness. The starting point in the federal analysis is the Herfindahl-Hirschman Index (HHI), an arithmetic measure of market concentration that synthesizes the distribution of market shares and the number of banks in the affected market into a single value. In this case, the HHI analysis demonstrates that consummation of the transaction will not result in an undue concentration of banking resources. In addition to that analysis, the Division considers the competitive impact of the proposed transaction on a community-by-community basis, as well as on the overall banking structure of the Commonwealth. In that regard, Berkshire presented information that the proposed transaction will not have a significant adverse effect on competition nor result in an undue concentration of banking resources in the communities served by the Continuing Institution. Berkshire and Commerce each have banking offices located in the Massachusetts counties of Middlesex, Suffolk, and Worcester. However, Boston and Westborough are the only two cities or towns in which both banks operate a banking office. A number of other banks and financial institutions also maintain banking offices in Boston and Westborough, thereby minimizing any impact that the proposed transaction will have on the citizens and banking structure in those communities. Furthermore, the application indicates that all of the banking offices of Commerce will be maintained as branch offices of the Continuing Institution. Accordingly, the review of the transaction's impact on competition supports its approval.

Public Convenience and Advantage

The Division next considered the record of the application to determine whether public convenience and advantage will be promoted. Berkshire indicates that as a result of the proposed merger, the banking public will benefit from the Continuing Institution's increased size, improved efficiency, and enhanced

ability to compete with other banks in its service area. Specifically, and as discussed further below, the customers of both banks will have access to a larger branch network, higher lending limits, and new or improved products and services.

In determining whether to approve a petition under the statutory criteria, the Division is required to consider a showing of “net new benefits” related to the transaction. That term as set out in section 3 of said chapter 167I includes initial capital investments, job creation plans, consumer and business services, and commitments to maintain and open branch offices, among other factors that the Division may deem necessary. Berkshire addressed this requirement of the statute. The Continuing Institution plans to make capital investments in signage, new equipment for the integration of the banks’ systems and operations, and improvements to banking offices. With regard to employment, Berkshire anticipates that employees of both banks will be retained, with the exception of some redundant back-office positions. Berkshire further explains that they believe expected continued growth will, over time, create additional jobs. The materials submitted as part of the application also indicate that customers of Commerce may benefit from expanded and enhanced products and services, including access to insurance, wealth management, and commercial lending products and services. As mentioned above, the Continuing Institution plans to maintain all of the banking offices of Commerce as branch offices. Customers of both banks will, therefore, find additional convenience conducting their banking business from the larger branch and ATM network of the Continuing Institution. Accordingly, the factors related to public convenience and advantage, including net new benefits, are consistent with approval of Berkshire’s application.

Related to the issue of public convenience and advantage is the record of CRA performance by the banks that are parties to this transaction. Such review for Massachusetts-chartered banks includes examination by personnel of the Division. A publicly available descriptive rating and evaluation by a federal bank regulatory agency may also be considered. Berkshire received a “Satisfactory” rating in its most recent CRA performance evaluation conducted jointly by the Division and the FDIC as of January 20, 2015. Commerce also received a “Satisfactory” rating in its most recent CRA performance evaluation also conducted jointly by the Division and the FDIC as of August 4, 2014. The Division’s consideration of the CRA performance of Berkshire and Commerce also supports the approval of the proposed merger.

Financial and Managerial Considerations

The Division also reviews and considers the financial and managerial aspects of the proposed transaction. According to materials submitted as part of the application, at the effective time of the proposed transaction, each share of Commerce Bancshares common stock issued and outstanding will convert to the right to receive Berkshire Hills common stock in accordance with a negotiated exchange ratio. No financing arrangements were reported as necessary to complete this transaction. Application materials further indicate that upon consummation of the transaction, the Continuing Institution will meet all regulatory capital requirements.

According to the application, two directors currently serving on the boards of directors of Commerce Bancshares and Commerce will be appointed to the respective boards of directors of Berkshire Hills and Berkshire in connection with the proposed transaction. The senior management of Berkshire Hills and Berkshire will not change as a result of the proposed transaction. Accordingly, upon review, the financial and managerial considerations support approval of the application.

Conclusion

Upon review of the complete record of the application with reference to the relevant statutory and regulatory requirements, the Division concludes that all such requirements have been met, and that consummation of the proposed transaction is in the public interest. On the basis of these considerations, and subject to the conditions set forth below, approval is granted for Commerce to merge with and into Berkshire under the charter, by-laws, and name of Berkshire pursuant to section 3 of chapter 167I of the General Laws. Upon consummation of the merger, the charter of Commerce will cease to exist; the separate existence of Commerce shall cease; and all rights, privileges, powers, franchises, properties, assets liabilities, and obligations of Commerce shall be vested in and assumed by the Continuing Institution. Approval is also granted for Berkshire to maintain the banking offices of Commerce as branch offices.

The approval granted herein is subject to the following conditions:

1. That the proposed merger shall not become effective until a Certificate signed by the Presidents and Clerks, or other duly authorized officers of each bank, indicating that each institution has complied with the provisions of Massachusetts General Laws chapter 167I, section 3 has been returned with my endorsement thereon;
2. That the proposed merger shall not become effective unless the Articles of Merger with my endorsement thereon are filed with the Secretary of State; and
3. That the proposed merger shall be consummated within one year of the date of this Decision.

Terence A. McGinnis

October 2, 2017____

Commissioner of Banks

Date

